1942

File No. L.O.R. Accts/42

K

Legal **DEPARTMENT**

C **BRANCH**

p 41 E7 — 1942

Subject:—

OK 5/6

Law Officers' Rules and

Accounts

File No. L O R Accts /42

Std. Sectt. Slip 24 B e.

273-C

C O N T E N T S.

Legal Department. Volume L.O.E. 1st/41. & 42.

Sr.No.	Correlation No.	Subject.	Pages.
	L.O.E.1st/41 & 42	Law Officers Rules and Accounts.	
1.	E.I.No.9560/20-10-42.	Bill for fees and law charges in Second Appeal No.660/1941.	1-21.
	G.O.L.D.No.7512/28.8.42.		
2.	E.I.No.2660/20-3-42.	Letter from Shri G.G. Shastri B.A., LL.B., Sub-Government Pleader, Kanara. Appointment of - to conduct criminal cases at Karwar.	22-53. (Pgs. 37-41 & 47 not copied)
3.	G.O.L.D.No.178/3.1.42.	Printing of correction slip to the Law Officers (Conditions of Service) Rules and Rules for the conduct of the Legal Affairs of Government.	55-71. (Pgs. 55-59, 67-71 not copied)
4.	G.P.M.G's Letter No. 16.4.42.	Bills in Council Appeal No.168 of 1941 and Civil Revision Application No. 44/1942.	
	E.I.No.3771-A/20-4-42.		73-77. (P. 73 not copied)
5.	E.I.No.7288/21-7-42.	Printing of correction slip to the Law Officers (Conditions of Service) Rule 1939.	79-89. (Pgs. 81-89 not copied)
6.	G.P.M.G's Letter No. 21-3-42	Refreshers to Counsel engaged in the High Court.	91-105 (not copied)
	E.I.No.3196/2.4.42		
7.	G.O.L.D.No.8221. 25-9-41.	Counsel fees in Sessions Cs and amendment of Rule 26(2) of the Law Officers' Rules	107-147 (Pgs. 107-133, 143-147 not copied)

SRT/22.5.

375

L.D.
No.1939
24.2.42.

Submitted.

The G.P.H.Ct.Bombay submits a bill amounting to Rs. 30/- for fees and Rs.2-10-0. for law charges Rs.32-10-0. on account of fees and law charges in S.A.No.668 of 1941. The G.P. has preferred his claims at Rs.30-12-0. after ——— deducting the advance of Rs.1-14-0 previously drawn by him on 12-8-1941.

3. The items of law charges are in order as they are duly supported by Ct.Vouchers. As regards the claim for fees the Court has passed no order as to Costs. The G.Ps Claim for fees needs therefore the Sanction of Govt. the fees Rs.30/- may perhaps be sanctioned under rule 26 L.D.(C. of S.) Rules after U.O.R. to F.D.

Sd/- R.S.Q.
10-3

Supdt. Sd/-
11/3

A.S. R.T.K.
12/3.

A.L.R.

SNT/22.5.

Consider rule 21(1) of L.O.Rules.

Sd/-
12/3.

Submitted.

2. Rule 16(f) of the Law Officers (Conditions of Services) Rules lays down that -

"in all other cases in which he appears on behalf of Government, the fees allowed by the court as costs in the cause"

Rule 21(1) lays down that

"Save as otherwise provided in this rule, a Government Pleader shall be entitled to the fees allowed by the court as costs in the cause, in suits or other proceedings in which he appears on behalf of Government."

3. Strictly following the wording used in the above rules viz. "fees allowed by the court as costs in the cause" a Government Pleader does not appear to be entitled to any fees when the court does not allow them as costs.

4. When the court allows full fees they get full fees, when the court allows 1/2 or less fees, they get that which the court allows; but when the court does not allow them any fee we have been going to F.D. under rule 26 for giving them the full fee i.e. the minimum which would have been computed as laid down in Schedule III of the Bombay Pleaders Act, 1920 and Appendix E to High Court Rules (A.S.) 1936.

5. The Rules perhaps contemplate that in cases in which no cost is allowed, the Government Pleader is supposed to have been compensated by the other considerations under which he holds the appointment. In the important cases of course he may come with a request for special fees under rule 26.

4. In rule 296(4) which deals with Matrimonial original cases it is provided that enhanced or special fees should not be included in any bill unless they are notedly sanctioned. Though similar prohibition provision is not repeated under other rules the principle applies to all cases in which bills come for counter-signature.

5. If the above is approved the Bills of the Government Pleaders may be returned to them for deletion on of the item of fees as enumerative whenever they include fees which have not been allowed by the court. If he thinks that some fees are necessary in a particular case it is open to him to move for sanction under rule 25,L.C.(C. of C.) Rules.

Sd/-
25/3

P.S.

On a strict interpretation of rule 21(1) [or rule 26(f),] a Govt. Pleader would be entitled to fees only where Government's costs have been awarded against the other side, and then too he would be only entitled to such fees as are allowed by the Court as part of the costs awarded. A decree contains a statement of costs incurred by each party (O.20,Rule 6(2) of the Civil Procedure Code).In decree in this case does not contain such a statement. It appears that even where the decree does contain such statement, the fees mentioned therein cannot be deemed to be allowed within the meaning of Rule 21(1) or rule 26(f) unless the conditions aforesaid are also satisfied.

2. This interpretation would doubtless deprive the Government Pleaders of their fees in some cases. It is possible that this was designed to ensure that they should have an incentive to work hard at their briefs. There would be no such incentive if the rules were to provide for payment of their fees irrespective of the result of the cases. In a proper case, fees

fees can be sanctioned under Rule 26.

3. It may be pointed out that other law officers of the Crown are not paid in all cases in which they appear. Thus the Advocate General is not entitled to fees in cases falling under rule 11(3A) while in cases falling under rule 11 (3A) he is only entitled to such fees as are allowed by the Court and are recovered from the other side. The scale of fees prescribed in rule 11(4), moreover, is in point of fact less than that at which good counsel usually charge fees. Similarly the Solicitors to Government are entitled to profit costs under rule 12(a) only where Govt. succeeds.

4. The law officers accept these small sacrifices in view of the compensations which their position as law officers brings them. The Advocate General is the leader of the Bar and has the right of pre-audience; he also receives a salary. The position of the Government Pleader is analogous. In the case of the latter, moreover, there are further considerations, namely, that the volume of Government work is considerable, and that by reason of their position as Government Pleaders, they get work also from the Court of Wards, the District Judge (in Minors' cases) etc. The interpretation suggested in para. 1 is therefore not unjust or unfair.

5. The procedure suggested in para 7 of the Superintendent's note may be followed.

Sd /-

27/3.

I agree with A. The present case was a letters Patent appeal, it would be a great hardship to disallow fees. The fees may be sanctioned under rule 26 of 20(3 of 8) Rules after U.O.R. to F.D.

Sd/- N.T.K.

31/3

A.L.R. The present case was a Second Appeal o
and not a Letters Patent Appeal.

I agree to para 7 of Supdt's
note. But D.S. also should see.

Sd/- N.K.D.
2/4.

2. I should like to know whether the interpretation suggested in para 1 of the P.A.'s note and the Statements in para 4 of the Supdt.'s note are in accordance with the current practice.

2. Pl. see also my remarks in the linked case regarding fees claimed by the D.G.P. Ah'bad.

Sd/-
3.4.42.

office (Pl. see ~~next~~ pages.).

SMT/23.5.

Submitted. 7.

2. With reference D.S.'s note dated 3-4-42 p.14 ante, it is stated that the current practice is that when fees are not allowed by the Courts we are sanctioning them under rule 26,Law Officers (Conditions of Service) Rules after going to F.D.

3. With reference to D.S's note dated 3-4-42 at slip 'Y' it is stated that based on the past xxxx practice and on the provisions of the old L.O.Rs. the fees when taxed in the decree have all along been paid irrespective of the fact that the costs may or may not be recoverable, or even when the Court's orders were "No orders as to costs" or "Dismissed with costs" against Government, so long as there was a decree taxing the pleader's fees.

4. To stop the practice mentioned in para 2 above and to get a definite ruling on account of the wording used in the new Rules 16(f) and 21(1), Law Officers (Conditions of Service) Rules, which are statutory, the present note has been put up.

5. The wording of the present rule and the old one is almost the same except that in the new Rule the words "according to law" have been omitted. In the old Rules there was also a provision for cases where when no costs have been allowed by the Court or the costs allowed are insufficient remuneration for the work done, the R.L.A. was authorised to grant a g fee not exceeding Rs.30.

Sd/-

Through P.A.A.S., & A.L.R. please.

Sd/-

7/4/42.

S.A.S. I think under rule 21(1) as it stands no fees can be sanctioned unless they are allowed by the Court as costs in the Summons Cause. Cases not covered by rule 21(1) would fall under Rule 26(1). Consequently in cases where no fees are allowed by the Court as Costs in the Cause Govt. may sanction them as special fees under rule 26. C.P. High Court may be informed as in para 7 of the Supdt's note at p.11 ante.

Sd/- R.T.K.
11/4

A.L.H. I agree with S.A.S.

Sd/- R.S.H.
13/4.

SMT/23.5.

No.3295

Office of the

Remembrancer of Legal Affairs,

Bombay Castle, 16th April 1942.

Subject:- Bill for fees and Law charges in Second Appeal No. 668 of 1941.

MEMORANDUM.

In returning herewith the bill amounting to Rs.30-12-0 on the above subject, the Government Pleader, High Court, Bombay, is informed that as the fees billed for have not been allowed by the Court they are not admissible. He should therefore resubmit his bill after deleting the items of fees therefrom. If he considers that some fees are necessary in any particular case it is open to him to move for Government sanction under rule 26 of the Law Officers (Conditions of Service) Rules.

Sd/- N.T.K.

For Remembrancer of Legal Affairs.

To

The Government Pleader, High Court,

Bombay.

SRT/23.5.

V..... Bombay, the 4-6-1942.

No.BAIL-TR-[illegible]/X. 1½.

From,

The Accountant General,
Bombay.

To

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Bills of the Government Pleader
High Court Bombay.

Sir,

I have the honour to invite your attention to Rule 195(3) of the Rules for the conduct of Legal Affairs of Government and to request you to state the check exercised by you as a countersigning officer in respect of a bill submitted on the conclusion of the case with a view to ensure that all the amounts drawn previously under sub-rule (2) are ---- deducted from the bill.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/-

ASSTT: ACCOUNTS OFFICER.

CRT/23.5.

No.3826 13.

Office of the
Remembrancer of Legal Affairs,

Bombay Castle, 2nd May 1942.

From

P.E. Moos, Esquire, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs;

To

The Accountant General,
Bombay.

Subject:- Bills of the Government Pleader
High Court Bombay.

Sir,

With reference to your letter No.DAIII_27-Proxy/38, dated the 4th April 1942, I have the honour to inform you that before a bill preferred under rule 195(3), Law Officers Rules is countersigned all the items previously drawn in relation to any particular suit under rule 195(2) are checked with the entries in the register and also with the vouchers that were received with the bill and retained in this office.

2. As these bills are now getting more frequent they are entered in the register in detail as finally drawn, so that when a bill under rule 195(3) comes it can be checked with each individual item previously cashed. Recently the Government Pleader, High Court, Bombay, has also been asked to supply a duplicate copy of each such bill for record in this office.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/- R.T.K.

For Remembrancer of Legal Affairs.

SMT/23.5.

No.6112

Legal Department.
Bombay Castle, 28th July 1942.

Subject :- Fees------
Payment of ---- to the Assistant Government Pleader, High Court, Bombay in Civil Application No.660 of 1941.

Memorandum.

The undersigned presents compliments to the Accountant General, Bombay and is directed to convey the sanction of Government under rule 26(1) of the Law Officers' (Conditions of Service) Rules, to the payment to the Assistant Government Pleader, High Court, Bombay of a fee of Rs.15/- (rupees fifteen only) for his appearance in the High Court, Bombay in Civil Application No. 660 of 1941.

By order of the Governor of Bombay.

Id/- R.T.K.

For Secretary to the Government of Bombay.
Legal Department.

To
The Accountant General, Bombay,
(Through the Finance Department).

SNT/23.5.

No.6113

Legal Department.
Bombay Castle,28th July 1942.

Copy forwarded to -

The Finance Department,
The Government Pleader, High Court, Bombay,
The Assistant Government Pleader, High Court,
Bombay.

Id/- R.T.K.

for Secretary to Government
Legal Department.

No.6232

Office of the Remembrancer of
Legal Affairs:

Bombay Castle, 3rd Aug. 1942.

MEMORANDUM.

The Bill			noted in the margin	is herewith
1. No.	for Rs. 15/-	,dated 25.5.	1942.	returned to
2. No.	for Rs.	,dated	194	Mr. R.A.
3. No.	for Rs.	,dated	194 ,	Jahagirdar.
4. No.	for Rs.	,dated	194 ,	

Government Pleader, High Court, Bombay,

duly countersigned.

By order,

J.D.
3/8.

Superintendent,
Office of the Remembrancer of Legal Affairs.

SMT/23.5.

Sub-No.7572 e/1/8/42. No.1681. 19.

Office of the
Government Pleader, High Court,
B O M B A Y, 31st July 1942.

From

R.A. Jahagirdar, Esquire, M.A. LL.B.
Government Pleader, High Court.

To

The Secretary to the Government of Bombay,
Legal Department.

Subject :- Fees -
Payment of —— to the Assistant Government Pleader, High Court, Bombay in Civil Application No.660 of 1941.

I am in receipt of a copy of the memorandum No.6112 dated 28th instant sent by you to the Accountant General, Bombay, regarding payment of fees to the Assistant Government Pleader, High Court, Bombay in Civil Application No.660 of 1941.

I have to point out that the fee of Rs. 15/- sanctioned by Government in the aforesaid application is too low and inadequate. The case in my opinion is covered by Rule 16 Cl.(d) of the Law Officers' Rules read with the rule vi Appendix E of the Rules framed by the High Court for computation of Advocates' fees. Whereas rule 16 Cl. (d) of the Law Officers Rules fixes the maximum not exceeding Rs.100/- in any proceedings in the High Court regarding the alleged improper conduct of the pleader or advocate, rule vi Appendix E of the High Court Rules framed for computation of Advocates' fees which are set out at pages 52-53 of the Rules of the Bombay High Court Appellate Side 1936, states that in no case whether specially provided for in the appendix or otherwise, the advocates fees payable. ~~Side 1936, states that in no case whether specially provided for~~ any in Civil suit, appeal, application or proceedings other than execution proceedings shall be less than

(a) Rs. 30/- in the High Court
(b) Rs. 15/- in the District Court or in the Court of a
& Subordinate Judge.
(c)

To the same effect are the provision in Schedule III of Act XVII of 1920.

It could not have been intended that while awarding maximum fees in the matter of disciplinary proceedings in the High Court, rule vi of the Rules framed by the High Court for computation of Advocate fee was to be disregarded or ignored. Rule 16(d) of the Law officers Rules provided only for the maximum amount of fee not exceeding Rs.100/- to be

to be paid to the Advocate leaving untouched the question of the amount of minimum fee which is solely governed by Rule vi Appendix R of the Bombay High Court Rules.

In my opinion Rule 26(1) does not apply to the present case of payment of minimum amount of fees; the rule clearly shows that it deals with cases of special remuneration or enhancement of fees in special cases, and not to the cases like the present.

I request that Government will be pleased to set aside the order sanctioning Rs.15/- to be paid to the Assistant Government Pleader in the aforesaid civil application and sanction Rs.30/- as the minimum fee to be paid to the Assistant Government Pleader.

Your obedient servant.

Sd/- R.A.Jahagirdar.

Government Pleader, High Court.

SNT/23.5.

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 28th August 1942.

From
P.N. Mene, Esquire, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs;

To
The Government Pleader, High Court,
Bombay.

Subject:- Fees ---
Payment of -- to the Assistant Government Pleader, High Court, Bombay, in Civil Application No. 660 of 1941.

Sir,

With reference to your letter No.1681, dated the 31st July 1942, I have the honour to state that the case referred to above relates only to transfer for the purpose of execution of a decree and does not fall under Rule 26(d) of the Law Officers (Conditions of Service) Rules, 1939, but the fee was sanctioned under [illegible] of the Rules. The expression "Special fees" in Rule 26(1) means any fees that may be fixed in cases not covered by any other rule. Appendix K to the High Court, Rules applies only as to the computation of the Advocates' fees where costs are awarded, and as no costs were awarded in this case, it can have no application.

Your obedient servant,

Sd/- R.T.K.

for Remembrancer of Legal Affairs.

Submitted for signature

Sd/-

Supdt. J.D.
27/8

A.S.

SMF/23.5.

To,

The Secretary to the Government of Bombay,

Legal Department, Secretariat,

Fort, Bombay.

From

G. G. Shastri, B. A. L. L. B.

Sub-government pleader,

Kunta, District North Kanara.

16th March, 1941.

Sir,

I have been appointed sub-government pleader for Kunta by Government Notification No.7564 dated 25th July, 1939. Ever since my appointment I have not been favoured with a single engagement in any criminal case on behalf of the Government though there were six or seven Government cases.

A part from the fact that prosecutions are usually engaged in police cases, it is regrettable to see that the Government pleader of Karwar is brought to Kunta for conducting criminal cases on behalf of Government. It is needless to say that the engagement of the Karwar pleader for Kunta cases is more expensive to Government than the engagement of the local sub-government pleader. It would also connote an unmerited slur upon me as a pleader. Such a state of affairs would obviously tend to make the appointment of sub-government pleaders, in Taluka towns superfluous. I therefore pray that the matter may kindly be redressed as early as possible.

Hoping to be obliged.

I beg to remain,

Sir,

Your most obedient servant,

Sd/- G. G. Shastri.

SMT/23.5.

Below letter dated 16th March 1941 from Mr. G.G. Shastri, Superintendent Government Printer, Kumta, District North Kanara.

No. 3517

Legal Department,

Bombay Castle, 22nd April 1941.

Forwarded, with compliments, to the District Magistrate, Kanara, for favour of his remarks. The attention of the District Magistrate is in the this connection invited to rule 46(3) (b) of the Law Officers' Rules.

By order of the Governor of Bombay,

Sd/-
19/4/41.
For Secretary to the Government of Bombay,
Legal Department.

Submitted for approval
& signature.

J.D.
17/4.

Supdt. Sd/-

A.L.R.

SNT/23.5.

Appointment of ---- to conduct criminal cases at Kumta.

No.C/A-5486

Karwar, 6th May 1941.

D. S. McCall, Esquire, M.A.,LL.B.
District Magistrate,Karwar.

To

The Secretary to Government,
Legal Department, Bombay.

Sir,

With reference to Legal Department endorsement No. 3517 dated the 22nd April 1941, forwarding for remarks an application from Mr. G.G.Bhatkal, Sub-Government Pleader Kumta, I have the honour to report as under :-

2. The Public Prosecutor, Karwar , was appointed to conduct one case in 1939 and 2 cases in 1941 in the court of the Magistrate I class, Kumta. The case of 1939 was for an offence of smuggling contraband, in which the D.F.O., N.D. made a representation through the Conservator of Forests, stating that the case was a complicated and an important one, which the R.F.O. was unable to conduct as it was contested by the accused.

The other cases are counter cases. The Sarkarkun, Gudibetta, detected a case of smuggling liquor at great risk and filed a complaint against the smugglers. A counter case under Sections 341, 323 and 114 I.P.C. was also filed against the sepoys. As the complaint was in respect of acts done by the Sarkarkun - Sarkarkun and his party in the discharge of their official duties as the Collector of Salt Revenue urged for the appointment of the Public Prosecutor in view of the importance involved in the cases, the services of the Public Prosecutor were made available for the cases.

3. Under Rule 46(3)(b) of the Law Officers' Rules, it shall be the duty of the subordinate Government pleader to appear when so required by the District Magistrate, etc., in the court of any Magistrate at or near the headquarters of the court for which he is appointed. But under rule 53 of the said Rules, the Sub-Government pleader cannot be appointed a Public Prosecutor for the purpose of

purpose of conducting a criminal case, unless the services of the Public Prosecutor are not available or if owing to his previous connection with the case, the Public Prosecutor finds it embracing to appear in it, there were no such circumstances in the cases in question and hence the Sub-Government pleader, Kunta could not be appointed in any of the cases. The working duties of the Sub-Government Pleader are detailed in rule 46 of the Law Officer's Rules and had Mr. Shastri perused the above rules, perhaps he would have had no grivance at all nor could he have any ground for complaint. Under the circumstances, the present application deserves no consideration.

4. The application of Mr. Shastri is herewith enclosed

I have the honour to be,

Sir,

Your most obedient servant,

Sd/-

District Magistrate, Kasara.

SMT/23.5.

No.6124

Legal Department.

Bombay Castle, 14th July 1941.

Subject:- Appointment of Public Prosecutor, Kanara, to conduct criminal cases at Kumta.

Memorandum.

With reference to his representation dated the 16th March 1941 on the above subject, Mr. G.G.Shastri, LL.B., Subordinate Government Pleader, Kumta, is informed that he cannot ~~xxxxxx~~ expect as of right to be engaged in any criminal case on behalf of Government. Rule 46(3)(b) of the Law Officers' Rules provide for the duty of a Subordinate Government Pleader to appear when so required by a District Magistrate. The six or seven cases referred to by Mr. Shastri in his letter were important ones in which the District Magistrate considered that it was desirable that the Public Prosecutor should appear and the appointment of the District Government Pleader, Kanara, in those cases did not therefore imply a slur on Mr. Shastri's work.

By order of the Governor of Bombay,

Sd/-

For Secretary to the Government of Bombay,
Legal Department.

To

Mr. G.G.Shastri, LL.B.,
Subordinate Government Pleader,
Kumta, North Kanara.

SNT/23.5.

No.6125

Legal Department.

Bombay Castle, 14th July 1941.

Copy forwarded, with compliments, to the District Magistrate, Kanara.

2. The attention of the District Magistrate is invited to rule 46(3)(b) of the Law Officers' Rules and he is informed that under this rule he can ask the Subordinate Government Pleader to appear on behalf of the Crown in any criminal case even though the circumstances mentioned in rule 53 of the said Rules are not present.

By order of the Governor of Bombay,

Sd/-

For Secretary to the Government of Bombay,
Legal Department.

Legal Department.

Submitted.

2. Attention is invited to rule 189 of the Law Officers' Rules which deals with the grant of legal assistance to Govt. servants. Para. 10 thereof however provides that the orders contained therein do not apply to police officers, because the procedure to be followed for the grant of legal assistance to police officers is prescribed in Government Resolutions, Home Department, Nos. 6105/3, dated the 20th February 1936 and the 9th October 1936. As the latter do not contain provisions similar to those made in paras. 6 and 8 of the said Appendix, so as to show how the cost should be met, or whether the bills need the countersignature of the R.L.A., it is therefore required to amend para 10 thereof so as to provide that the provisions of paras.6, 7 and 8 thereof shall apply to police officers.

3. The following amendment may be made to para. (10) of rule 189 of the L.O.Rs.:-

"In sub-rule (10) of rule 189 of the Law Officers' Rules after the words "in this Chapter" the words figures and brackets "except rules (6), (7) and (8)" shall be inserted.

4. These papers may be shown w.e. to the H.D. before the new amendment is taken up.

J.D. 15/5

S.A.S. 20/-

20/5

A.L.R.

As the Rule 4 of the Rules for the Defence of Bombay City Police Officers seems to correspond to Sub-Rules 6 & 7 of Rule 189 L.O.Rules.

Perhaps it is necessary only to amend the Police Rules so as to incorporate Sub-rule 8 of Rule 189 L.O.Rules.

Will office pl. recommend?

M.K.D.
28/5.

Office.

Resubmitted.

The presumption made by A.I.R. that rule 4 of Bombay City Police Officers Rule corresponds to Govt. Sub-Rules (6) &(7) of rule 189 of the L.O.Rs is correct but with all that Sub-rule (10) of rule 189 will have to be amended so as to make Sub-rule (8) applicable in the case of grant of legal assistance to Police Officers. Rule 189 may therefore be amended as follows: Sub-rule (10) to rule

"In Sub-rule(10) of rule 189 of the Law Officers Rules after the words "in this Chapter" the words, figure and brackets "except sub-rule(8)" shall be inserted.

As regards the amendment of rules printed as a-companiments to H.D. G.O. No. 6105/3, dated 20-2-36 and 9-10-36, H.D. may be requested to consider the question raised by A.L.R. in his note dated 28-5-41 on p. 4 ante.

M. J.D. 12-6-41.

S.A.R.

It is true that the provisions of sub-rules (6) and (7) of Rule 189 of the L.C.Rules are substantially (but not fully) to be found in rule 4 of the Police Rules. But it appears desirable that these provisions of sub-rules (6) and (7) should be made specifically applicable as in case of other Government servants to the Police Officers. In any case it will be necessary to apply the provisions of sub-rule (8). I think an amendment as suggested in para. 3 of the office note at p. 3 ante may be made, if H.D. has no objection.

Sd/- S.R.P. 13/6

A.L.R. H.K.D. 14/6.

D.S. H.D. may see as suggested.

Sd/-

17/6

U.R. to H.D. No.5466, dated 19-6-1941.

Sd/-

Fl. see the L.D. notes above.

(P.T.O.

(p.p 3-5) It is proposed to amend Sub-rule (10) of rule 189 of the Law Officers' Rules, so as to provide for the conditions in sub-rules (6), (7) & (8) of that rule being made applicable to police officers. L.D. agrees that the provisions of sub-rules (6) &(7) are, in substance, to be found in Rule 4 of the Police Officers Defence Rules but suggests that they should be more specifically made applicable to police officers. It may be mentioned that the condition in sub-rule (6) has been invariably incorporated in H.D. orders sanctioning legal assistance to police officers, while that in sub-rule (8) has been similarly brought out in such orders in the case of Bombay City Police Officers ((but Not Distt. Police Officers.)

2. However, there appears to be no objection to the proposed amendment of sub-rule 10 of rule 189 of the L.O. Rules.

Sd/-

24-6-41

Sd/-

U.S. 2d/ —
1/7/41

U.O.R. to the L.D. dt.1-7-41.

(with L.D. file L.O.R. Rules Accts./37)

SHT/23.5.

Submitted with pp.

These papers relate to the proposed amendment to Sub-Rule(10) of rule 187 of the L.C.Rs.

The E.D. to whom the papers were referred to have no objection to the proposed amendment.

This case along with the other amendments will be put up very shortly.

J.D.
15/7

Supdt. Sd/-

S.A.S. Sd/-

A.L.R. Sd/- E.K.D.
18/7

D.S. Sd/-
19/7

SNT/23.5

The note and the amendments to L.C.Rules, as revised by D.S., are submitted.

2. Since the publication of the amendments to the revised Law Officers (Conditions of Service) Rules and the Rules for the conduct of Legal Affairs of Government on 17th March 1941, some further difficulties have been experienced in actually dealing with certain cases and to remove these difficulties necessary further amendments are now suggested.

3. All the proposed amendments are arranged in order of the rules in the Statements A and B attached herewith. The following paragraphs explain the objects of each amendment:-

Law Officers (Conditions of Service) Rules. - Statement A.

Rule 13 A.- As the Govt. of India has agreed to the payment of fees to the Pub.Prosr. for Bombay for his appearance in prosecutions under the Companies Act, the necessary provision is proposed to be made in the Rules by inserting a new Rule 13A. F.D. has been consulted.

Rules for the Conduct of the Legal Affairs of Government.

(L.G.Rs.)- Statement B.

Rules 46 & 53. - Several cases have come to notice in which the District Public Prosecutors have been sent outside the district headquarters for conducting cases in magisterial courts. It would however be less expensive to Govt. if those cases which do not involve complicated questions of law or fact are entrusted to Sub.Govt. Pleaders. This is permissible under rule 46(3)(b) of the L.C.Rules which provides that it is the duty of the S.G.P. to appear when so required by the D.M. in any court of any magistrate at or near the headquarters of the Court for which he is appointed. Some District Magistrates have however contended that a Sub.Govt. Pleader connot be asked to conduct any case unless the

unless the conditions of rule 53 are satisfied. This rule provides that if in any case the services of the Public Prosecutor are, for any reason, not available, or if owing to his previous connection with the case the Public Prosecutor finds it embrassing to appear in it, the District Magistrate may appoint a suitable person under section 492(2) of the Criminal Procedure Code to be Public Prosecutor for the purpose of conducting that case. To remove all room for doubt, it is therefore proposed to revise rule 53 as shown in Statement B.

Rule 188.- As the G. R. referred to in sub-rule (3) of Rule 188 has been amended, this sub-rule also needs an amendment. The words "as amended by Government of India, Home Department Notification No.105/40 dated 18-9-1940" are proposed to be inserted before the words "issued in exercise of".

It is also necessary to insert a reference in this rule to the Government of India Notification No.107/40 (Slip 'P' of the loose papers below). A sub-rule (4) may be inserted as shown in Statement B.

Rule 189.- Sub-rule (10) of this rule provides that the orders contained in the rule do not apply to police officers as the procedure to be followed for the grant of legal assistance to police officers is prescribed in G.Rs., H.D., No.6105/3, dated the 20-2-1936 and 9-10-1936. As the G.Rs. do not contain provisions similar to those made in sub-rules (6) and (8) of the rule, so as to show how the costs should be met or whether the bills need the countersignature of R.L.A., it is necessary to amend sub-rule (10) so as to make it clear that the provisions of sub-rules(6), (7) and (8) shall apply in the above mentioned cases also. H.D. has agreed to the proposed amendment.

Sd/-
16/11.

D.S. The amendments shown in the attached Statements A & B are necessary and may be approved. approved

Sd/-
19/11.

D.S. Sd/-

Secy. P.N.M. 22/11.

A.(H). Sd/- 24/11/43.

SRT/25/3.

Statement A.

In exercise of the powers conferred by clause (b) of sub-section (2) of section 241 of the Govt. of India Act, 1935, the Governor of Bombay is pleased to amend the Bombay Law Officers (Conditions of Service) Rules, 1939, as follows, namely:-

After rule 13 of the said rules the following new rule shall be inserted namely.-

Fees in prosecutions under the Indian Companies Act, 1913.

"13-A. The Public Prosecutor for Bombay shall be entitled to a fee of Rs.50/- per hearing for appearing in any Magistrate's Court in any prosecution under the Indian Companies Act, 1913:

Provided that he shall not be entitled to -

(a) a fee for any day on which a sumon case is merely adjourned, if intimation of the adjournment has been given to him before the date of hearing, or

(b) a fee for any day on which only judgement is pronounced, or

(c) separate fees for appearing in more than one court on the same day, unless Government, for special reasons, considers that separate fees should be paid".

By order of the Governor of Bombay,

Secretary to Government.

SHR/25.5.

Statement B.

The Governor of Bombay is pleased to further amend the Rules for the Conduct of the Legal Affairs of Government published in Government Notification, Legal Department, No.8493, dated the 23rd August 1939 as follows.:-

1. For rule 53 of the said rules, the following shall be substituted, namely:-

"53. Power of District Magistrate to appoint Special Prosecutors.- (1) If in any case arising at the headquarters of the district the services of th Public Prosecutor are, for any reason, not available or if owing to his previous connection with the case the Public Prosecutor finds it embarrassing to appear in it, the District Magistrate may appoint a suitable person under section 492(2) of the Criminal Procedure Code, to be Public Prosecutor for the purpose of conducting that case.

(2) If in any case arising outside the headquarters of the District, the District Magistra considers it necessary that a special Public Prosecutor should be appointed he shall appoint the Sub.Govt. Pleader under section 492(2) of the Cr.Pr. Code, to be Public Prosecutor for the purpose of conducting that case, if the place of trial of such case be at or near the headquarters of such Sub.Govt.Pleader.

Provided that if the District Magistra is of the opinion that the case is so complicated or of such importance that it is desirable that the Public Prosecutor should himself conduct the case, he may ask the Public Prosecutor to appear in such case.

(3) Every appointment made under this Rule shall be subject to the condition that the fees to be paid to the person appointed shall not exceed those which would be payable to the Public Prosecutor for conducting such case.

(4) Every such appointment shall be reported without delay to the Legal Remembrancer."

2. In rule 196 -

(a) In sub-rule (3) after the figures "1940" the words and figures "as amended by Government of India, Home Department Notification No.105/40 dated 18-9-1940" shall be inserted.

(b) The following new sub-rule (4) shall be inserted at the end, namely:-

"(4) By Government of India, Home Department, Notification No.107/40-Judicial, dated the 26th March 1941, issued in pursuance of rules 2,6 and 8-B of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), the Central Government has authorised the Government Pleader, High Court at Bombay, the District Government Pleaders, the Solicitor to the Central Government at Bombay and Mr.S.Narayaniah, Advocate, Bombay, to act in any court within the Province of Bombay for the Crown in respect of all judicial proceedings by or against the Secretary of State or the Central Government other than those relating to the Eastern Bengal, East Indian, Great Indian Peninsula or North Western Railway or the s' Railways Coal Department, and for a public officer in the service of the Central Government in respect of all suits against such public officer, the defence of which is undertaken by the Central Government."

3. In rule 189, in sub-rule (10), for the words "the rules contained in this chapter" the words, brackets and figures "the provisions of sub-rules (1) to (5) and (9) of this rule" shall be inserted.

By order of the Governor of Bombay,

Secretary to Government.

SRT/25.5.

Government of Bombay.

Legal Department.

Second list of corrections in the Law Officers (Conditions of Service) Rules and Rules for the Conduct of the Legal Affairs of Government.

Law Officers
(Conditions of Service) Rules.

No. 14.

Page 5, Rule 13A.-

After rule 13, the following new rule shall be inserted, namely :-

13-A. Fees in prosecutions under the Indian Companies Act, 1913.- The Public Prosecutor for Bombay shall be entitled to a fee of Rs.50 per hearing for appearing in any Magistrate's Court in any prosecution under the Indian Companies Act, 1913 (VII of 1913):

Provided that he shall not be entitled to -

(a) a fee for any day on which a case is merely adjourned, if intimation of the adjournment has been given to him before the date of hearing, or

(b) a fee for any day on which only judgement is pronounced, or

(c) separate fees for appearing in more than one court on the same day, unless Government, for special reasons, considers that separate fees should be paid."

(G.N.L.D.No.10639 dated 10th December 1941).

Rules for the Conduct of the Legal Affairs of Government.

No. 15

Page 31, Rule 53.-

For rule 53, the following shall be substituted, namely:-

"53. Power of District Magistrate to appoint Special Prosecutor.- (1) If in any case arising at the headquarters of the district, the services of the Public Prosecutor are, for any reason, not available, or if owing to his previous connection with the case, the Public Prosecutor finds it embarrassing to appear in it, the District Magistrate may appoint a suitable person under section 492(2) of the Criminal Procedure Code, to be Public Prosecutor for the purpose of conducting that case.

(2) If in any case arising outside the headquarters of the district, the District Magistrate considers it necessary that a special Public Prosecutor should be appointed, he shall appoint the Subordinate Government Pleader under section 492(2) of the Criminal Procedure Code, to be Public Prosecutor for the purpose of conducting that case, if the place of trial of such case be at or near the headquarters of such Subordinate Government Pleader ;

Provided that if the District Magistrate is of the opinion that the case is so complicated or of such importance that it is desirable that the Public Prosecutor should himself conduct the case, he may ask the Public Prosecutor to appear in such case.

(3) Every appointment made under this rule shall be subject to the condition that the fees to be paid to the person appointed shall not exceed those which would be payable to the Public Prosecutor for conducting such case.

(4) Every such appointment shall be reported without delay to the Legal Remembrancer."

(G.N.L.D.No.10640 dated 10th December 1941).

No. 16.

Para 77, Rule 188.-

In rule 188 -

(a) in sub-rule (3) after the figures "1940" the words and figures "as amended by Government of India, Home Department, Notification No.105/40-Judicial, dated the 18th September 1940" shall be inserted; and

(b) after sub-rule (3) the following new sub-rule shall be inserted, namely :-

(4) By Government of India, Home Department, Notification No.107/40-Judicial, dated the 26th March 1941, issued in pursuance of rules 2,8 and 8-B of Order XXVIII of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), the Central Government has authorised the Government Pleader, High Court at Bombay, the District Government Pleaders, the solicitor to the Central Government at Bombay and Mr.S.Narayaniah, Advocate, Bombay, to act in any court in the Province of Bombay, for the Crown in respect of all judicial proceedings by or against the Secretary of State or the Central Government other than those relating to the Eastern Bengal, East Indian, Great Indian Peninsula or North-Western Railway or the State Railways Coal Department, and for any a public officer in the service of the Central Government in respect of all suits against such public officer, the defence of which is undertaken by the Central Government."

(G.N.L.D.No.10540 dated 10th December 1941).

Page 77, Rule 189 :-

In rule 189 -

in sub-rule (10), for the words "The rules contained in this Chapter" the words, brackets and figures, "The provisions of sub-rules (1) to (5) and (9) of this rule" shall be substituted.

(G.N.L.D.No.10540 dated 10th December 1941.)

R. T. Katarki,
Assistant Secretary to the Government of Bombay,
Legal Department.

Submitted.

2. It has been noticed that under rules 16(f) and 21(1) of the Law Officers' (Conditions of Service) Rules as they stand the Government Pleaders are debarred from ——— claiming fees in cases which are decided against Government in spite of the best efforts on the part of the Government Pleaders to win the case for Government Since the rules were published on more than one occasion the question of payment of fees to Government Pleaders in cases of the nature above referred to has arisen and there seems to be no justification for withholding fees in cases which are decided against Government. To provide for this contingency it is proposed to amend rules 16(f) and 21(1) of the L.O.(C. of S.). Rules whereby the Government Pleaders would be entitled to such fees as are actually ——— allowed by the Court as fees in the cause or might have been allowed as fees in the cause, had the decision been favourable to Government.

3. The necessary draft amendment is put up herewith, which may may be submitted to A(H) after F.D. has seen these papers.

F.D. 19/6

S.A.S. Sd/- 19/6

D.S. N.K.D. 19/6

U.O.N. to F.D.No.50628 dt. 20/6/42.

SRT/23.5.

Finance Department.

The Govt. Pleader High Court is in receipt of a salary of Rs. 450 p. m. In addition, he is entitled to fees in Criminal and other cases as prescribed in rules 15 and 16 of the Law Officers' Rules. In the present case he has claimed fees under Rule 16(f) interpreting that fees allowed by the court as costs in the cases would mean fees usually allow-able irrespective of whether fees are allowed or not in a particular case. Otherwise, he would make no order as to costs. The papers referred to at "A" of the Govt. Pleader's letter are not available for reference herein. There seems, however, no objection to the proposed amendments of the rules.

Sd/-
24/6/42.

Put up Law Officer's Rules.

Sd/-
24/6

Resubmitted with a copy of the Ruler.

Sd/-
25/6/42.

Sd/-
25/6

U.O.R. to L.D. dt. 25/6/42.

Notification.
Legal Department.
Bombay Castle, 1942.

The Government of India Act, 1935

No. .—— In exercise of the powers conferred by clause (b) of sub-section (2) of section 241 of the Government of India Act, 1935, the Governor of Bombay is pleased to make amend the Bombay Law Officers (Conditions of Service) Rules, 1939, as follows, namely :-

In clause (f) of rule 16 and sub-rule (1) of rule 21 of the said rules, for the words "the fees allowed by the Court as costs in the cause" the words "such fees as are actually allowed by the Court as fees in the cause or as might have been allowed as fees in the cause had the decision been favourable to Government" shall be substituted.

By order of the Governor of Bombay,

sd/- V.N.MODI.

Secretary to Government.

No. 9562
Legal Department,
Bombay Castle, 8th July 1942.

Forwarded with compliments to the Manager, Government Central Press, Bombay, for publication in Part IV-A of the Bombay Government Gazette, with a request that 25 Gazette copies of the notification may be supplied to this Department as soon as possible.

2. It is also requested that the type should be kept standing until further orders from this Department, regarding the printing of the correction slips.

By order of the Governor of Bombay,

Sd/- K.K.P.
for Secretary to Government.

SMT/25.5.

Legal Department.

5605/27-6-42.

Submitted with pp.

2. The Finance Department has accepted the proposal of this Department to amend the rules 16(f) and 21(1) of the Law Officers (Conditions of Service) Rules, 1939.

3. These papers may now be submitted to the A(H) before they are published.

Sd/-

Supdt. Id/- J.D. 28/6

S.A.S. Id/- S.B.P. 29/6

D.S. Id/- N.K.D. 29/6

Sec. Id/- P.N.M. 29/6

A(H) Id/- Sd/- 30/6/42.

SNT/25.5.

This case was discussed today by R.L.A. with the P.P. and myself. We came to the conclusion that if rule 26(2) of the Law Officers Rules is amended as shown below, it would meet some of the difficulties now experienced by the P.P.

"26. (2) The fees payable to such counsel shall not, except with the special sanction of Government, exceed 6 G.Ms:

Provided that if the hearing of the case (including the luncheon interval) takes more than six hours to conclude, an additional fee shall be payable for every hour of hearing or part thereof after the expiration of the first six hours at the rate of 5 G.Ms. for every six hours:

Provided further that in any case in which he considers that the circumstances of the case necessitate the engagement of Counsel at higher fees, the Public Prosecutor may, with the previous approval of the Advocate General, pay to such Counsel such fees, not exceeding 8 G.Ms., as he deems fit and if the hearing of the case (including the luncheon interval) takes more than six houbs to conclude, he may pay additional fees to such Counsel for each every hour of hearing or part thereof after the expiration of the first six hours at the rate of 6 G.Ms. for every six hours."

2. The first part of the revised rule is practically the same as the first part of R.L.A.'s draft at p.8 which has been already agreed to by P.D. The only difference is that the revised draft uses the words "G.Ms" instead of "Rs." A G.M. means Rs.15/- and

...../.....P.T.O.

and consequently the fees suggested in the first part of the revised draft so not embrace those which have already been agreed to by F.D.

3. The second proviso is however a new addition The P.P.xxxxxxxxx has reported that he finds it exceedingly difficult to get good Counsel on the fees previously prescribed. He therefore suggested that he should be given discretion to pay higher fees to Counsel in such cases as he deems fit. The Advocate General also agrees with this view (see pp.31 to 41). In view however of the necessity to economise expenditure, particularly during the present time of war, it is necessary to impose a restriction on any discretion that may be given to the P. P. The second proviso accordingly gives him a discretion to pay higher fees to Counsel, but not exceeding G.Rs. for the first day and 60.Rs. for any subsequent day. The provision is necessary and may be incorporated in the rule after u.o.r. to F.D.

4. The P.P. also represented that the present restriction imposed on him by G.M.,L.D.No.40-P dated 31st October 1938, slip E, that he should not ordinarily engage Counsel of more than 10 years' standing should be removed. Many of the cases involve difficult and complicated questions of law and it is therefore necessary that the conduct of such cases should be entrusted to more senior Counsel The P.P. may therefore be given a discretion to engage Counsel upto 20 years' standing in such cases.

Sd/-

Secy. F.E.M. 16/12

u.o.r. to the F.D. No.10661 dt. 17th December 1941.

SRT/23.5.

Finance Department.

Please see F.D. notes dt. 25.8.41 and 15.9.42 on pp. 9-12 ante.

2. The L.D. has now suggested a revised Rule 28(2). Under the rule as now proposed to be amended, there will be no extra cost to Govt. so far as "ordinary" cases are concerned, as the fees to be allowed will be not more than 6 G.Ms. on the 1st day and thereafter @ 5 G.Ms. for every six hours. In "extraordinary" cases, however which require engagement of good counsels the L.D proposes to allow 8 G.Ms. for the first six hours and thereafter @ 6 G.Ms. for every six hours. We may agree to the porposal of the L.D. in view of the position explained.

Sd/- V.D.G.
20-12-41.

Sd/-
22/12

u.o.r. to the L.D. dt. 23-12-41.

The papers may now be submitted to A (H)

Sd/-
23/12

Secy. P.N.M.
26/12

A(H): Sd/-
4/1/42.

SRT/25.5.

Submitted.

2. These papers relate to the amendment of rule 28(2) of the Rules for the Conduct of the Legal Affairs of Government. Rule 28(2) as approved by Government is at p.45 ante. The amendment has been put in the notification form for publication in the E.G.G. The notification on p.51 post may be sent to the Press for publication in Part IV-A of the E.G.G.

3. Detailed instructions regarding printing and supply of correction slips will be given to the Press as soon as the notification is published in the Gazette and the copies are supplied by the Press. The requisite endorsement to the Press is put up for approval and signature.

4. As divided recently, the A.G. may be furnished with an advance copy of the notification. A draft endorsement is also put up.

S.A.V.
26/1.

S.S. Sd/-
P.A. Sd/-
29/1

A.L.R. Sd/-
29/1

D.S.(before issue) Sd/-
29/1/42.

SNT/25.5.

Notification.

Legal Department.
Bombay Castle, 31st January 1942.

No. 897. - The Governor of Bombay is pleased to amend the Rules for the Conduct of the Legal Affairs of Government, published in Government Notification in the Legal Department No.8493, dated the 23rd August 1939, as follows, namely :-

For sub-rule (2) of rule 28 of the said rules. the following shall be substituted, namely :-

"(2) The fees payable to such counsel shall not, except with the special sanction of Government, exceed 6 G.Ms.

Provided that if the hearing of the case (including the luncheon interval) takes more than six hours to conclude, an additional fee shall be payable for every hour of hearing or part thereof after the expiration of the first six hours at the rate of 5 G.Ms. for every six hours :

Provided further that in any case in which he considers that the circumstances of the case necessitate the engagement of Counsel at higher fees, the Public Prosecutor may, with the previous approval of the Advocate General, pay to such Counsel such fees, not exceeding 8 G.Ms., as he deems fit and if the hearing of the case (including the luncheon interval) takes more than six hours to conclude, he may pay additional fees to such Counsel for every hour of hearing or part thereof after the expiration of the first six hours at the rate of 6 G.Ms for every six hours."

By order of the Governor of Bombay.

sd/- P.N.Moos.
Secretary to Government.

No. 898

Legal Department.
Bombay Castle, 31st January 1942.

Forwarded with compliments to the Manager, Government Central Press, Bombay for publication in Part IV-A of the Bombay Government Gazette, with a request that 25 gazette copies of the notification may be supplied to this Department, as soon as possible.

2. It is also requested that type should be kept standing until further orders from this Department, regarding the printing of the

the.....

of the corrections slips.

By order of the Governor of Bombay.

Id/- S.L.C.
30/1

for Secretary to Government.

Advance copy forwarded to the Accountant General, Bombay, with reference to paragraph 2 of his letter No. D.A.IIIE7. Proof/1895, dated the 3rd January 1942.

Id/- S.L.C.
30/1

for Secretary to Government.

SMT/25.5.

Legal Department.

Third list of correction to the Law Officers (Conditions of Service) Rules for the Conduct of the Legal Affairs of Government.

Rules for the Conduct of the Legal Affairs of Government.

No. 18.

Page 21, Rule 28 —

For sub-rule (2) of rule 28, the following shall be substituted, namely :-

"(2) The fees payable to such counsel shall not, except with the special sanction of Government, exceed 6 G.Ms :

Provided that if the hearing of the case (including the luncheon interval) takes more than six hours to conclude, an additional fee shall be payable for every hour of hearing or part thereof after the expiration of the first six hours at the rate of 3 G.Ms. for every six hours:

Provided further that in any case in which he considers that the circumstances of the case necessitate the engagement of Counsel at higher fees, the Public Prosecutor may, with the previous approval of the Advocate General, pay to such Counsel such fees, not exceeding 8 G.Ms., as deems fit and if the hearing of the case (including the luncheon interval) takes more than six hours to conclude,, he may pay additional fees to such Counsel for every hour of hearing or part thereof after the expiration of the first six hours at the rate of 6 G.Ms. for every six hours."

(G.N. L.D. No. 897, dated 31st January 1942)

S.S. Palekar.

Assistant Secretary to the Government of Bombay, Legal Department.

Legal Department.
Bombay Castle, 24th February 1942.

SMT/25.5.